

LAW WEEK

COLORADO



OPINION

April 22, 2024

Don't Say Alienation

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Alienation or “parental alienation” can be defined as the psychological manipulation of a child by one parent to damage the child’s relationship with the other parent. In family law, this is a controversial concept that has been used by courts to dismiss abuse allegations. In too many instances these abuse allegations have been met in family court with rejection and hostility, often reversing custody to a noncustodial parent.

According to ProPublica, parental alienation as a concept “has been rejected by mainstream scientific circles but continues to influence custody decisions.”

Kayden’s Law

The federal Keeping Children Safe From Family Violence Act, also known as Kayden’s Law, was enacted in 2022 and is named after Kayden Mancuso, a 7-year-old girl from Pennsylvania who was killed by her biological father during a court-ordered unsupervised custody visit.

In May 2023, Colorado was the first state to pass Kayden’s Law. This legislation serves as a model for other states grappling with similar challenges. It emphasizes the need to prioritize children’s best interests and protect them from harm in custody cases.

Kayden’s Law and alienation

The Colorado law is new and yet to be fully tested but it essentially rejects or scrutinizes the concept of “alienation.”

It no longer allows courts to cut off a child’s contact with a protective parent to improve a relationship with a parent accused of abuse or domestic violence. Of particular importance is that Kayden’s Law limits courts’ abilities to order “reunification treatment,” a course of action that is predicated on cutting contact with the custodial parent.

Many reunification programs are based on the idea that the children are suffering from [parental alienation](#) that is caused by the influence of one parent seeking to undermine the other parent. The ProPublica investigation found that treatment often includes “physical restraint, threats and the removal of personal items—including food, clothing and shower supplies.”

Prior to Kayden’s Law, one parent could accuse another of alienation and seek to remove the child from that parent, solely based on their perception that the custodial parent was not supporting the relationship with the noncustodial parent. This is often what happened. Some extreme allegations resulted in the courts completely removing children from their custodial parent.

Frequently, children were resistant to this change of custody and would refuse to go with the other parent. In extreme cases, the children were being physically removed by transport companies and taken to programs in other states where they would lose contact with their custodial parent (and their friends and extended family) for months on end.

This should never happen.

Don’t say Alienation

Since the passage of Kayden’s Law the swift response from family law practitioners has been to avoid using the term “alienation.” For years, people on the forefront of the anti-alienation movement have been asking for a rejection of this vernacular. But for many who are accused of alienation, or believed they were victims of alienation, Kayden’s Law has not been a perfect solution.

Problems with Kayden’s Law

The concept of alienation can be problematic. It has been misappropriated by individuals who have engaged in coercive control, counter parenting, legal abuse and other forms of intimate partner violence and abuse. Let's refer to this group of people as Group 1.

There is, however, another group, let's call them Group 2. Group 2 consists of those who have lost contact with their children because of false allegations. Kayden's Law was designed and intended to protect victims of intimate partner violence in custody cases. But it left a gaping hole, and for lack of a better word, alienated some of those people it sought to protect.

Post Separation Abuse

If you were to ask a wide range of experts, they would likely say that Group 2 is experiencing something called post separation abuse.

Unfortunately, while the anti-alienation movement has, for very good reasons, swiftly rejected the concept of alienation, the upshot has been that it has also stigmatized those in Group 2 who are experiencing post separation abuse.

There is no question that parents use children against the other parent. This is the underpinning of alienation itself. Perfectly good parents can lose contact with their children if the other parent is determined enough. We often see that the parent who wants to use the children to harm the other parent will stop at nothing.

Conclusion

We can agree that we needed a vernacular shift and perhaps we can agree that the term "alienation" only serves the alienation industry. We can all agree that no matter what,

children should not physically be dragged from homes and removed from their friends and family.

Similarly, we cannot allow abusive parents who have perpetrated domestic violence, child abuse and post separation abuse to be custodial parents. This is where Kayden's Law is sorely lacking. It is heartbreaking to deal with caring and responsible parents who have lost custody of and contact with their children, some of them for years. Currently there are no real solutions for those cases and Kayden's Law can almost serve as a roadblock to relief.

We need to be careful about rejecting a phenomenon over semantics and be clear about what we are rejecting: reunification camps and transportation companies, deeply scarring and traumatizing experiences for children.

A more appropriate discussion would be: What happens when a parent of a vulnerable child engages in post separation abuse to such an extent that they are successful in interfering with a parent's custodial rights?

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